

HOUSE BILL NO. 597

INTRODUCED BY R. STOKER

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE SCOPE OF THE LAW THAT ALLOWS CITIES, TOWNS, AND COUNTIES TO ENACT LOCAL ORDINANCES ON OBSCENITY TO MINORS THAT IS MORE RESTRICTIVE THAN STATE LAW; AND AMENDING SECTION 45-8-201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-8-201, MCA, is amended to read:

"45-8-201. Obscenity. (1) A person commits the offense of obscenity when, with knowledge of the obscene nature ~~thereof~~ of the material or performance, ~~he~~ the person purposely or knowingly:

(a) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene to anyone under the age of 18;

(b) presents or directs an obscene play, dance, or other performance; or participates in that portion ~~thereof~~ of the performance that ~~which~~ makes it obscene; to anyone under the age of 18;

(c) publishes, exhibits, or otherwise makes available anything obscene to anyone under the age of 18;

(d) performs an obscene act or otherwise presents an obscene exhibition of ~~his~~ the person's body to anyone under the age of 18;

(e) creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of 18; or

(f) advertises or otherwise promotes the sale of obscene material or materials represented or held out by ~~him~~ the person to be obscene.

(2) A thing is obscene if:

(a) (i) it is a representation or description of perverted ultimate sexual acts, actual or simulated;

(ii) it is a patently offensive representation or description of normal ultimate sexual acts, actual or simulated; or

(iii) it is a patently offensive representation or description of masturbation, excretory functions, or lewd exhibition of the genitals; and

(b) taken as a whole the material:

- 1 (i) applying contemporary community standards, appeals to the prurient interest in sex;
- 2 (ii) portrays conduct described in subsection (2)(a)(i), (2)(a)(ii), or (2)(a)(iii) in a patently offensive way;
- 3 and
- 4 (iii) lacks serious literary, artistic, political, or scientific value.
- 5 (3) In any prosecution for an offense under this section, evidence ~~shall be~~ is admissible to show:
- 6 (a) the predominant appeal of the material and what effect, if any, it would probably have on the behavior
- 7 of people;
- 8 (b) the artistic, literary, scientific, educational, or other merits of the material;
- 9 (c) the degree of public acceptance of the material in the community;
- 10 (d) ~~appeal to prurient interest or absence thereof in whether or not~~ advertising or other promotion of the
- 11 material appeals to a prurient interest; or
- 12 (e) the purpose of the author, creator, publisher, or disseminator.
- 13 (4) A person convicted of obscenity shall be fined at least \$500 but not more than \$1,000 or imprisoned
- 14 in the county jail for a term not to exceed 6 months, or both.
- 15 (5) Cities, towns, or counties may adopt ordinances or resolutions ~~which~~ that are more restrictive as to
- 16 obscenity than the provisions of ~~45-8-206~~ 45-8-205 through ~~45-8-208~~ 45-8-207 and this section."

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